

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

GREGORY BRENT CHRISTIAN,

Plaintiff,

v.

CIVIL ACTION NO. 3:05-0879

TERESA WAID, Warden,
Huttonsville Correctional
Center, and DARRELL MCGRAW,
Attorney General of the State
of West Virginia,

Defendants.

ORDER

This action was referred to the Honorable Maurice G. Taylor, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted Findings of Fact and recommended that the petition be denied without prejudice and that this action be retired to the inactive docket of the Court pending exhaustion of state court remedies. The petitioner's response did not object to the Magistrate Judge's findings and recommendation that this action be stayed pending exhaustion of state remedies. The respondents filed no objection. Therefore, the Court presumes the petitioner meets the circumstances which entitle him to a stay pending exhaustion as provided in *Rhines v. Weber*, 544 U. S. 269 (2005).

The Court **ADOPTS** the Magistrate Judge's Findings and Recommendation and **DENIES** the petition without prejudice and retires this action to the inactive docket of the Court pending exhaustion of state court remedies. In conformity with prior orders of the Court in this

circumstance, and to address time concerns reflected in 28 U.S.C. § 2244(d), Petitioner is **ORDERED** to file a habeas petition in the Circuit Court of Cabell County within 30 days from the date of this Court's order and is advised that to exhaust state remedies he must, if relief is denied in the circuit court, seek an appeal of the denial in the Supreme Court of Appeals of West Virginia. Should he file to diligently pursue exhaustion of his state remedies, this petition will be denied with prejudice.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Taylor, counsel of record, and any unrepresented parties.

ENTER: July 11, 2007



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE